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Summary record of the 220th meeting

Topic:
Nationality including statelessness

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could each choose its own representative in order to form an arbitral tribunal. The difficulties were not therefore insoluble, but it would certainly take much longer to solve them than the Commission had still to sit. He agreed therefore that it could do no more, at the very most, than make a general suggestion in its report.[4]

The meeting rose at 6 p.m.

[4] Discussion of the question of inserting an arbitration clause was reopened at the 223rd meeting. See *infra* 223rd meeting, paras. 4-79.

220th MEETING

Tuesday, 21 July 1953, at 9.30 a.m.

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* The number within brackets corresponds to the article number in the Commission's report.

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.

Present:

Members: Mr. Ricardo J. ALFARO, Mr. Gilberto AMADO, Mr. Roberto CÓRDOVA, Mr. Shuhsi HSU, Faris Bey el-KHOURI, Mr. F. I. KOZHEVNIKOV, Mr. A. E. F. SANDSTRÖM, Mr. Georges SCELLE, Mr. Jean SPIROPOULOS, Mr. J. M. YEPES, Mr. Jaroslav ZOUREK.

Secretariat: Mr. Yuen-li LIANG, Director of the Division for the Development and Codification of International Law, and Secretary to the Commission.

Nationality, including statelessness (item 5 of the agenda) (A/CN.4/64) (*continued*)

DRAFT CONVENTION ON THE ELIMINATION OF FUTURE STATELESSNESS (*continued*)

Arbitration clause [Article 10] (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of the article on implementation that had been proposed at the previous meeting by the Special Rapporteur and Mr. Scelle as an addition to the draft Convention on the Elimination of Future Statelessness.[1]

2. Mr. KOZHEVNIKOV wondered whether there was any point in his speaking, as on the previous day the authors of the article had appeared no longer to be insisting on its addition to the draft convention.

3. The proposed additional article again raised the question of the legal status of the individual in international law. In his view, the Commission's task was to confirm the basis of international law: to develop and perfect existing law, rather than to change its substance. The Commission should eschew anything that might imperil or violate the structure of international law as it existed. He emphasized yet once more that, in his view, international law concerned exclusively relations between States. The proposal under consideration, on the contrary, would allow individual physical persons to take part in the processes of international law. He was glad that Mr. Lauterpacht had admitted that there was a contradiction between that proposed additional article and other articles in the draft convention.

4. If the individual physical person were accepted as a subject of international law, additional opportunities of interfering in the domestic affairs of States would inevitably result. For there were forces at work that were bent on destroying, first the doctrine of sovereignty, and then sovereignty itself. If they succeeded, international law would be directed not towards democracy, peace and progress, but towards other and reprehensible ends.

5. The text of the proposed additional article was in any event vague and indefinite. How was the conciliation commission to be established? Which were the "governments concerned" mentioned in paragraph 2? The article related not only to persons who were stateless, but also to "persons... likely to become so"; but who was to determine that a person was likely to become stateless?

6. Apart from his anxiety about the whole idea, which he regarded as wrong, of compulsory arbitration between individuals and States, he felt that the text itself was bewildering. He thought the Commission would be wise not to accept the article, and he was therefore glad that the authors appeared to be willing to withdraw it.

7. Mr. ZOUREK said that other members of the Commission had already emphasized that the machinery proposed in the additional article left much to be desired. He expected that in the majority of cases only one State would be concerned; it was therefore likely that it would be difficult to set the machinery in motion.

8. In his view, the greatest disadvantage of the proposed additional article was that it would enable an individual physical person to engage in litigation on a basis of equality with States. Such a possibility was incompatible with the relationship between an individual and the State of which he was a national. For, according to the additional article, an individual would be entitled to

[1] See *supra*, 219th meeting, para. 45.

take action even if he had not yet become stateless. Such a procedure was inimical to the very foundations of international law, since it would destroy the existing conception of the sovereignty of States.

9. A number of considerations had been adduced in support of the article. The 1922 Geneva Convention between Germany and Poland concerning Upper Silesia,[2] had, for example, been cited as a precedent. That example, however, seemed to him irrelevant, since the Convention in question had been concerned with bilateral arrangements governing a transfer of territory, and had certainly not permitted nationals to bring proceedings against their own government. It had also been suggested, in his view erroneously, that the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, under the auspices of the Council of Europe, gave individuals the possibility of appeal to a European court; but the only right that the individual enjoyed under that Convention was that of seizing the European Commission on Human Rights of the case. Not even the covenants on human rights that were being drafted by the Commission on Human Rights provided for direct complaint by an individual against a State; under the terms of those instruments, only a State could raise the question of an alleged breach of human rights.

10. There seemed thus to be no adequate precedents, and the proposed additional article should not be included in the draft Convention on the Elimination of Future Statelessness.

11. Mr. LAUTERPACHT said that he had been thinking about the subject matter of the discussion, particularly in the light of the considerations raised by the Special Rapporteur at the 219th meeting.[3] Although his (Mr. Lauterpacht's) previous remarks,[4] to the effect that the Commission could hardly hope to solve the problem that had been baffling the Commission on Human Rights for years, seemed to have impressed other members, he now considered that the problems facing the two Commissions were different. The Commission on Human Rights was faced with the problem of giving the individual physical person a procedural right of action in respect of a large number of comprehensive rights: the right of freedom of association, political rights, economic and social rights, and so forth. It was therefore not surprising that it should have encountered difficulties in dealing with the right of petition of the individual. The International Law Commission, on the other hand, was now concerned with only one right, which was being defined in a carefully framed convention.

12. It was evident that the Commission would in part be failing in its duty if it did not provide means whereby the individual might assert his right to a nationality under the terms of the draft Convention on the Elimination of Future Statelessness. The matter was one which concerned both that instrument and the draft Convention on the Reduction of Future Statelessness; and though the Commission ought to consider it exhaustively, he believed that that should be done only when the drafting of both conventions had been completed.

13. He agreed that the text before the Commission was in some respects defective. For example, who precisely would be the experts mentioned in paragraph 1, and were they necessary? Was conciliation really important? Would not an inquiry be preferable? Would arbitration be practicable in cases where one litigant was an indigent person unable to pursue the costly road of international arbitration proceedings to its end?

14. But when, if his suggestion were adopted, the Commission came to go into the matter thoroughly, it might be necessary to consider the theoretical issues that had been, or might be, raised by Mr. Kozhevnikov, Mr. Zourek and other members of the Commission, who considered that States alone could be subjects of international law. In his view, the existing position was not so rigid as some of his colleagues appeared to think. The International Court of Justice had, for example, recently delivered an advisory opinion,[5] in which the Soviet Union member of the Court had concurred, concerning reparation for injuries suffered in the service of the United Nations; the United Nations, as such, had been regarded as having a right of action. Again, there was the advisory opinion of the International Court of Justice concerning the international status of South-West Africa,[6] in which it had been decided, also with the concurrence of the Soviet Union member of the Court, that the inhabitants and peoples of South-West Africa had rights under international law deriving both from the terms of the Mandate and from resolutions of the Council of the League of Nations. He came to the conclusion, therefore, that the precedents were not all in the direction that Mr. Zourek had suggested.

15. Further, he pointed out that the Convention on the Elimination of Future Statelessness would not be imposed on States; any State acceding to it would do so freely and voluntarily. Such a procedure could hardly be described as an encroachment upon the sovereignty of States.

16. Finally, he urged the Commission not to shrink from thorough consideration of the matter merely because of its controversial nature. Individuals were the ultimate subjects of all law, whether municipal or international. He hoped that Mr. Kozhevnikov and others would be willing to reconsider their position.

17. Mr. CÓRDOVA said that Mr. Lauterpacht had in effect made a procedural proposal, namely, that discussion of the additional article be deferred until after the Commission had completed its work on both draft

[2] Signed at Geneva on 15 March 1922. See de Martens, *Nouveau Recueil Général*, 3e série, vol. XVI, p. 645.

[3] See *supra*, 219th meeting, paras. 45-46 and 62.

[4] *Ibid.*, paras. 47-48, and 56-57.

[5] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, I.C.J. Reports 199*, p. 174.

[6] *International Status of South-West Africa, Advisory Opinion, I.C.J. Reports 1950*, p. 128.

conventions on statelessness. As the issue was a most important one, he supported Mr. Lauterpacht's suggestion.

18. Mr. SANDSTRÖM agreed with Mr. Córdova.

19. Mr. HSU said that, before a decision was taken on the procedural issue, he would like to explain his proposal, then being circulated, which was complementary to those of the Special Rapporteur and Mr. Scelle, and was that a further additional article be added, reading:

"A commission under the auspices of the United Nations shall be established to act on behalf of stateless persons in cases of dispute contemplated in the previous article."

The additional article submitted by the Special Rapporteur and Mr. Scelle would require consequential amendment.

20. He made that suggestion partly to meet the objection that individuals were being raised to a level of equality with States in the matter of litigation; an international commission acting on behalf of individuals would, he hoped, serve the required purpose without offending any susceptibilities.

21. His second purpose was to make the machinery of appeal more efficient; for the function of a commission was not only to help in the administration of justice, but also to assist persons in need who might well be indigent and unable to help themselves.

22. His third purpose was to complete the draft Convention on the Elimination of Future Statelessness. It would obviously be defective if it failed to provide means for its implementation; and it seemed to him that any State approving the terms of the other articles of the convention would be unlikely to refuse to agree to appropriate methods for ensuring its immediate effectiveness.

A motion proposed by Mr. Córdova and seconded by Mr. Sandström, that discussion of the issues raised by the additional article proposed by the Special Rapporteur and Mr. Scelle be deferred until after the Commission had finished its work on both the draft Convention on the Elimination of Future Statelessness and the draft Convention on the Reduction of Future Statelessness, was adopted by 10 votes to none, with 3 abstentions.

Draft Convention on the Reduction of Future Statelessness (*resumed from the 218th meeting*)

Article I [1] (resumed from the 218th meeting)

23. The CHAIRMAN invited the Commission to take up again the draft Convention on the Reduction of Future Statelessness. Speaking as Chairman, he summarized the positions so far taken by the various members of the Commission on article I of that convention; speaking as a member of the Commission, he explained the amendment he proposed to it, which read:

"1. If no nationality is acquired at birth, either *jure sanguinis* or *jure soli*, every person shall acquire at birth the nationality of the Party in whose territory he is born.

"2. The national law of the Party may make preservation of such nationality conditional on the person's being normally resident in its territory until the age of eighteen."

24. States applying the principle of *jus sanguinis* did not consider that the fact of a person being born on their territory provided an adequate basis for the acquisition of their nationality; and that view was based on considerations that transcended purely legal principles. Other States, of course, in different circumstances, maintained that birth in their territory was a reasonable basis for conferment of their nationality. For instance the States of the New World considered that immigrants should regard their new countries as new homes, and should have the intention of residing there permanently. But in the Old World the position was different. There, immigrants were of all kinds: persons seeking work temporarily, refugees from persecution, and many others who had not necessarily any intention of making their permanent home in the country they entered. The child of such an immigrant, born in the country of immigration, had no special connexion with it, and it was clearly inappropriate that the mere fact of birth should determine its nationality. It was for that reason that the Special Rapporteur had suggested a text for article I, according to which the child of a stateless person would only acquire the nationality of the State in whose territory it was born on the fulfilment of certain conditions which would ensure that there was more than the link of fortuity between the individual and the State. In the Special Rapporteur's draft, the strongest evidence for a closer link was provided by military service, for his text ran as follows:

"If a person does not acquire any nationality at birth, either *jure soli* or *jure sanguinis*, he shall subsequently acquire the nationality of the State in whose territory he was born, provided that:

"(*a*) He continues to reside in such State until the time when he reaches military age; or

"(*b*) He opts for the nationality of the State where he was born on reaching military age; or

"(*c*) He serves in the armed forces of the State in whose territory he was born."

25. Some members of the Commission thought that the conditions demanded by that text were not satisfactory; for example, the condition of doing military service was inappropriate for women. Furthermore, under it the child would remain stateless until it reached military age. The amendments submitted by Mr. Lauterpacht and Mr. Sandström went, perhaps, even further in the same direction, in that by them stateless persons might only acquire the nationality of the State in whose territory they were born after attaining their majority. Mr. Lauterpacht's amendment read:

"Whenever a person does not acquire any nationality at birth he shall, on attaining majority,

acquire on application the nationality of the State in whose territory he was born provided that he has no other nationality and he has resided habitually in that State since birth ".

26. Mr. Sandström's amendment read:

" If a person does not acquire any nationality at birth, he shall, when attaining the age of majority, have the right to acquire, by option, the nationality of the State in whose territory he was born, provided that since his birth he has had his habitual residence in that State."

27. Mr. Scelle had objected that it was not in keeping with the Commission's aims for children to be left stateless, if that could be avoided; and Faris Bey el-Khouri and Mr. Yepes had proposed amendments according to which nationality would be acquired at birth, though certain conditions would have to be fulfilled if that nationality were to be retained. Faris Bey el-Khouri's amendment read:

" If a person does not acquire any nationality at birth he shall acquire at birth the nationality of the State in whose territory he was born, and he remains a national of that State unless he opts, within one year after attaining majority, for another nationality which he may have acquired, or unless he is revoked by the government of the State on the grounds of failing to comply with [fulfil the requirements of] its municipal laws for retaining nationality."

28. Mr. Yepes' proposed text read:

" If, for any reason whatsoever, a person does not acquire any nationality at birth, he shall acquire at birth the nationality of the State in whose territory he was born, provided that, in addition:

" (1) he has resided in the country for a continuous period of at least five years immediately before attaining his majority; or

" (2) both parents, or the one exercising parental authority, were domiciled in the country at the time of his birth, or

" (3) during the year in which he attains his majority under the law of the country of birth, he opts for the nationality of that State in accordance with its legislation."

29. He found Faris Bey el-Khouri's amendment somewhat obscure; for under it a government would be able to impose any conditions it chose, additional to those mentioned in the convention. Thus it seemed that a reduction in statelessness would not necessarily result. Mr. Yepes' proposal was not clear either. Its intention was that a child should acquire at birth a temporary nationality which might be confirmed later on the fulfilment of certain conditions, of which the chief was that the child should have resided in the country concerned for a continuous period of at least five years immediately before the attainment of its majority. To him (Mr. François) that did not seem to be an adequate condition, and he would prefer as a criterion the child's habitual residence from the time of its birth until its eighteenth birthday in the country concerned. He gave as an example the hypothetical case of a child born in France of stateless persons who subsequently established their home in Germany, where the child was educated; if that child were to return to France at the age of sixteen — the age mentioned in Mr. Yepes' proposal — it would be regarded there as a German, and the French authorities would not consider that it could automatically acquire French nationally after five years' residence, as could a stateless person according to Mr. Yepes' proposal. If, on the other hand, it had remained from birth in France, it would have had its education in that country, learnt French as its mother tongue, and might well be regarded as a French child when it reached the age of eighteen.

30. For those reasons, he proposed that article I be replaced by the text proposed by himself.

31. It seemed to him to be reasonable to permit a child, provided it had been normally resident in the country concerned, to go abroad after the age of eighteen, whether for study or any other purpose; for that reason his proposal did not speak of " majority ".

32. Mr. Alfaro had said that a stateless person should not be in a privileged position by comparison with any other alien in respect of the acquisition or loss of nationality. He (Mr. François) thought that that went without saying, and that it applied to both the draft conventions.

33. He thought that the Commission should ensure an adequate guarantee of the link between child and State; otherwise countries applying the principle of *jus sanguinis* would not be satisfied. Mr. Yepes' suggestion did not, in his view, tend to establish such a link. He thought, however, that his own proposal might serve as a useful compromise between the views stated in the discussions.

34. Mr. LAUTERPACHT, welcoming Mr. François' proposal, supported it fully and withdrew his own amendment in its favour. To his mind, Mr. François' amendment went further than did the Special Rapporteur's proposal in the direction which the latter would prefer. It would tend to eliminate statelessness from birth, and a child acquiring a nationality pursuant to it would not lose that nationality except by reason of absence of habitual residence. The proposal did not aim so high as the complete elimination of statelessness, but it provided a practical solution to most of the practical problems involved. He urged members of the Commission not to press their own proposals.

35. Mr. ALFARO, too, supported the Chairman's proposal, which met all the difficulties to which attention had been drawn. It was particularly satisfactory to him, in that it ensured that a stateless child would not be in a privileged position relative to other children born in the country concerned; but to make doubly sure on that point, he would suggest that the following clause be inserted in paragraph 2, after the word " eighteen ":

" and provide that to retain that nationality he must, on attaining majority, comply with such other

conditions as are required from all persons born in the Party's territory."

36. He could not support Mr. Yepes' amendment.[7]

37. The CHAIRMAN pointed out that Mr. Alfaro's suggestion should relate to the relevant articles in *each* convention.

38. Mr. ALFARO thought, on the other hand, that the draft Convention on the Elimination of Future Statelessness was intended to provide absolute rules. Any attenuating principles such as the proposal he had just made should, according to his understanding, be placed only in the draft Convention on the Reduction of Future Statelessness; for some countries, he was sure, including his own, would be unable to accept the former.

39. Mr. HSU congratulated the Chairman on his flexible and reasonable proposal.

40. Mr. SANDSTRÖM had some difficulty in accepting the Chairman's proposal. Absence from one's country of birth seemed to him in itself to be perfectly innocent; yet, the amendment would prevent the nationality of a State being conferred on a person who had been abroad. He thought it preferable to wait eighteen years from the birth of a child and to confer nationality on it then.

41. Mr. SCELLE considered that the Commission's main objective must be to prevent a child being left stateless from birth to the time of its majority. He agreed that it was necessary to ensure that persons acquiring the nationality of a State became members of the national community in a more spiritual sense.

42. Mr. François' proposal seemed to him to meet all requirements, and he supported it as it stood.

43. Referring to Mr. Alfaro's concern that no distinction should be made between the children of stateless persons and the children of other aliens, he said that it went without saying that all normal conditions should apply to stateless children as to others, and he doubted whether there was any need to state the principle explicitly. Could Mr. Alfaro give any examples of the discrimination he had in mind?

44. Mr. YEPES could not support Mr. François' amendment. He had objections of principle, as well as objections to the drafting, for it seemed to him quite illogical to state that, if a child had not acquired nationality *jure soli*, it should acquire the nationality of the State on whose territory it was born; if that was not *jus soli* what was?

45. Further, Mr. François' proposal was not in keeping with just his (Mr. Yepes') conception of nationality, for it provided not just a material but rather a spiritual and even sentimental link between the individual and the State. Underlying the concept of nationality there was always a philisophical notion which it would be a mistake to overlook. He felt that the link between the individual and the State should be provided by circumstances other than the mere fact of birth; in his proposal, habitual residence, the domicile of the parents, and option, were all provided as links. In particular, Colombian legislation was not in conformity with the principles of Mr. François' amendment.

46. Referring to his (Mr. Yepes') proposal that five year's residence immediately before attaining majority should be required as a condition precedent to the acquisition of the nationality of the country in whose territory a stateless child had been born, Mr. François had suggested that a young person born in France, but brought up in Germany, and therefore not regarded as French, might acquire French citizenship under it. But it seemed to him that Mr. François' argument proved too much, since, if accepted, it would prevent normal naturalization. Prior to the five years' period of residence an applicant for naturalization usually had had little connexion with the State whose nationality he was seeking. He could see no reason why an applicant for naturalization should be treated more favourably than stateless persons born in the country. To his mind, to require eighteen years' continuous residence was an unjust discrimination against a person who already had a link with the country because he had been born in it. The five years' prior to majority were decisive in the matter of nationality, for it was then that a man chose his profession and, often, his wife, and that the general direction of his life was usually determined.

47. The CHAIRMAN, speaking as a member of the Commission, said that he agreed entirely with Mr. Yepes that paragraph 1 of his proposal, which was merely the text adopted by the Commission for article I of the draft Convention on the Elimination of Future Statelessness, needed re-drafting.

48. But he could not agree with Mr. Yepes about the necessary period of habitual residence. Mr. Yepes seemed to have forgotten that naturalization was a privilege, whereas the convention under discussion would confer a right; there was a great difference between the two.

49. Mr. LIANG (Secretary to the Commission) said that it was his understanding that the Commission had not finally adopted any particular text for article I of the draft Convention on the Elimination of Future Statelessness. His recollection was that the draft of article I had been submitted to the Drafting Committee, but that the latter had not yet considered it.

50. Mr. AMADO could not understand Mr. Yepes' objections to Mr. François' proposal. Leaving aside the question of the words "either *jure sanguinis* or *jure soli*", that proposal seemed to express exactly what the Commission required, and he would vote in favour of it. The conditions which Mr. Yepes proposed were much more liberal, and did not constitute a sufficient link between the State and the individual.

Mr. Alfaro, on the other hand, proposed that the individual should have to comply with any conditions prescribed by the law of the State. In his (Mr. Amado's) view it was not reasonable that the State should require an individual to do more than be normally resident in

[7] See *supra*, para. 28.

its territory until the age of eighteen, as proposed by Mr. François. If a person was normally resident in the territory of a State during his formative years, sufficient link between him and it would have been created to justify its nationality being conferred upon him.

51. Mr. CÓRDOVA said that he could add little to what had already been said by the Chairman in the course of his masterly exposition. The text proposed by Mr. Alfaro and by Faris Bey el-Khouri shared the disadvantage of making it possible for the State to prescribe excessive conditions for the acquisition of nationality. On the other hand, none of the three conditions listed by Mr. Yepes constituted a sufficient link between the individual and the State. Moreover, if it was sufficient that both parents, or the one exercising parental authority, should be domiciled in a country at the time of their child's birth, the effect of the present convention would be almost identical with that of the draft Convention on the Elimination of Future Statelessness. Mr. François made it possible for the retention of nationality to be made subject only to habitual residence until the age of eighteen; his proposal hit the happy mean, and he (Mr. Córdova) would vote in favour of it.

52. Mr. ALFARO felt it necessary to explain why he considered that the adoption of Mr. Francois' proposal would place the children of stateless persons in a more privileged position than the children of other aliens. A child born of two French nationals in Panama was, according to the Panamanian Constitution, *prima facie* a national of Panama. The Constitution, however, also provided that on attaining his majority such a person should forfeit Panamanian nationality if he did not renounce his parents' nationality, swear allegiance to the Republic of Panama, show that he could speak the language of the country and knew something of its geography, history and political structure, and, in general, prove that he was physically and morally integrated into the life of the country. If he wished to exercise political rights, he was also required to have lived in Panama during the two years preceding his majority.

53. Those conditions might appear excessively onerous; the reason for them lay in the fact that since the opening of the Panama Canal, large numbers of aliens had settled in the country; they had lived a life apart, however, and not become integrated in the nation's life. It was clearly unreasonable that children born to such people should remain Panamanian nationals unless they fulfilled the conditions he had mentioned, and it was in order to protect the independence of the nation that the Constitution contained the provisions he had referred to. Similar provisions were to be found in the constitutions of a number of other Latin-American States. He did not see how such States could accept a proposal which made habitual residence in the country until the age of eighteen the sole qualification for retention of nationality.

54. Faris Bey el-KHOURI said that his proposal did not mean that States would be able to prescribe special conditions which would have to be fulfilled by persons born stateless, but only that such persons should comply with the relevant laws applying to all the inhabitants of the territory. It was surely obvious that persons born stateless should be subject to the same laws as the other inhabitants of the country whose nationality they possessed.

55. Mr. SANDSTRÖM said that the "normal residence" condition proposed by Mr. François would give rise to serious uncertainties in practice. For example, if a person was abroad for one or two years, was he to be considered as being "normally resident" in the country in which he had been born? That objection was so serious that he could not vote for Mr. François proposal. In his own, he requested that the word "majority" be changed to the word "eighteen".

56. Mr. LAUTERPACHT said that if he had to choose between a provision which would leave stateless until the age of eighteen persons born stateless and a provision which would give them nationality at birth but which might — though he did not think it would — give rise to certain doubts about the retention of such nationality at the age of eighteen, he would choose the latter. He had already pointed out, however, that he did not think such doubts could arise. Absence for one or two years would not matter.

57. With reference to what Mr. Alfaro had said, he wished to point out that the Commission was endeavouring to formulate a general rule, not one which would take into account the peculiar circumstances which might obtain in various countries. He did not see the relevance of the example chosen by Mr. Alfaro to support his proposal. In the case of stateless persons the question of renouncing another nationality did not arise; and if they were habitually resident in Panama until the age of eighteen, it was reasonable to suppose that they would speak the language and have some knowledge of the country's history and geography. He was therefore still unable to understand why Mr. Alfaro should be unwilling to accept the text proposed by Mr. François.

58. Mr. AMADO said that he was unfortunately obliged to leave the meeting, but he wished to place on record the fact that the statements which had been made since he had last spoken had not shaken his support for Mr. François' proposal, and that had he been present for the vote, he would have voted in favour of it.

59. Mr. ZOUREK felt that the main objection which had been lodged against Mr. François' proposal was valid, namely, that it made nationality solely dependent on the place of birth. In inserting the proviso contained in paragraph 2 of his proposal, Mr. François had perhaps tried to take into account the preoccupations of *jus sanguinis* countries, but States might wish to prescribe many other conditions for the retention of nationality than that of normal residence until the age of eighteen. Moreover, as Mr. Sandström had pointed out, paragraph 2 of the text proposed by Mr. François introduced a serious element of uncertainty. For example, a person might go abroad before the age of

eighteen intending to remain for a matter of weeks or months; circumstances could change, however, and he might remain abroad for years; in such a case, when, under Mr. François' proposal, would he lose his nationality?

60. The text proposed by Mr. Sandström was preferable, though if the individual was given the right of option, the State concerned should also be given its say.

61. Mr. YEPES proposed that the words "either *jure sanguinis* or *jure solis*" in paragraph 1 of Mr. François' proposal be replaced by the words "*jure sanguinis*", and that the following phrase be added to paragraph 2:

> "or impose other conditions regarded as necessary to make certain that there are genuine links with the country of birth".

62. He did not consider that mere habitual residence in a country until the age of eighteen was sufficient evidence of a link between the individual and the State. States might well consider that other conditions should be fulfilled. If his amendment to Mr. François' proposal was not adopted, he would ask that a vote be taken on the proposal which he had made.[8]

63. The CHAIRMAN said that, as Mr. Córdova had withdrawn the text proposed in his report, and as Mr. Lauterpacht and Faris Bey el-Khouri had withdrawn their proposals, the Commission had before it only the proposals made by Mr. Sandström and Mr. Yepes, and that made by himself, together with the amendments to the latter proposed by Mr. Alfaro and Mr. Yepes. The latter's proposed amendment to paragraph 1 was a drafting point which could be referred to the Drafting Committee.

64. Mr. YEPES agreed with the Chairman's suggestion. Instead of the words "*jure sanguinis*" the Drafting Committee might think it preferable to use the term "for any reason whatsoever".

65. The CHAIRMAN then put Mr. Sandström's proposal to the vote, with the amendment made by its author, namely, the substitution of the word "eighteen" for the word "majority".

Mr. Sandström's proposal was rejected by 5 votes to 1, with 4 abstentions.

66. The CHAIRMAN invited comments on Mr. Yepes' amendment to paragraph 2 of his proposal.

67. Mr. SCELLE understood the preoccupations of Mr. Yepes and Mr. Alfaro. The Commission, however, was trying to restrict statelessness. If it left States free to impose whatever conditions they liked for the retention of nationality, it would be defeating its purpose.

68. Mr. ALFARO said that he had supported all proposals to give the child of stateless parents the nationality of the country in which he was born. Once the child acquired that nationality, however, he must not be placed in a more privileged position than the children of other aliens. If he failed to retain the nationality he acquired, the responsibility lay with him, not with the State. He (Mr. Alfaro) must therefore support Mr. Yepes' amendment, which had the same purpose as his own.

69. The CHAIRMAN pointed out that Mr. Yepes' amendment went far beyond Mr. Alfaro's.

70. Mr. CÓRDOVA agreed with Mr. Scelle that if Mr. Yepes' amendment left States free to impose any conditions they wished for the retention of nationality, the Commission would be defeating its own ends by adopting it.

Mr. Yepes' amendment to paragraph 2 of Mr. Francois' proposal was rejected by 5 votes to 4, with 3 abstentions.

71. Mr. YEPES then withdrew his own proposal for article I.

72. The CHAIRMAN invited comments on the amendment proposed by Mr. Alfaro to paragraph 2 of his proposal. He would first ask Mr. Alfaro whether the words "on attaining majority" should not be deleted, since some States at least might oblige persons who had acquired their nationality to comply with certain conditions at other times.

73. Mr. ALFARO said that he saw no harm in deleting those words. What he had had in mind had been the conditions which had to be fulfilled at the time the acquisition of nationality lost its provisional character. The withdrawal of nationality at a later date was a quite separate matter.

74. The CHAIRMAN said that he saw no difficulties arising out of Mr. Alfaro's amendment in the case of *jus soli* countries, but that, at first sight at least, it appeared to give *jus sanguinis* countries the possibility of frustrating the whole purpose of the Convention; for a country applying *jus sanguinis* could make it one of the "conditions" that one or both of the parents should have its nationality.

75. Mr. ALFARO said that neither his country nor, he believed, any other adhered strictly to the principle of *jus soli*. His point might be made clearer by adding the words "of alien parents" before the words "in the Party's territory", but he did not think that was necessary, since no such conditions were required from persons born of nationals.

76. Mr. HSU said that as the Convention was intended to be supplementary to the existing law, there was no need to say that the existing law must be complied with.

77. Mr. ALFARO pointed out that the whole purpose of his amendment was to avoid irregularity in the application of the existing law.

78. Faris Bey el-KHOURI said that, as the amendment proposed by Mr. Alfaro would improve the text, he would vote in favour of it. That did not mean, however, that he could vote for the article as a whole or for the

[8] See *supra*, para. 28.

convention, so long as they failed to distinguish between stateless individuals and stateless masses.

79. Mr. LIANG (Secretary to the Commission) suggested that the aim of the constitutional provisions to which Mr. Alfaro had referred was to prevent a person who would acquire another nationality *jure sanguinis* from acquiring Panamanian nationality as well, by the mere fact of his having been born in that country. The Commission's aim was different; it was to confer a nationality on persons who would otherwise have no nationality at all. In his view, therefore, the argument that the text proposed by Mr. François would place persons who would otherwise be stateless in a privileged position failed to take into account the general aim of the Convention.

80. The CHAIRMAN said that he would vote in favour of Mr. Alfaro's amendment on the understanding that the various drafting points which had been raised with regard to it would be referred to the Drafting Committee.

On that understanding, *the amendment proposed by Mr. Alfaro to paragraph 2 of Mr. François' proposal was adopted by 5 votes to 2, with 5 abstentions.*

Paragraph 1 of Mr. François' proposal was adopted by 7 votes to 1, with 4 abstentions.

Paragraph 2, as amended, was adopted by 7 votes to 1, with 4 abstentions.

Mr. Francois' proposal as a whole was adopted, as amended, by 7 votes to 1, with 4 abstentions. Subject to any drafting changes made by the Drafting Committee, the text read as follows:

"1. If no nationality is acquired at birth, either *jure sanguinis* or *jure soli*, every person shall acquire at birth the nationality of the Party in whose territory he is born.

"2. The national law of the Party may make preservation of such nationality conditional on the person's being normally resident in its territory until the age of 18 and provide that to retain nationality he must comply with such other conditions as are required from all persons born in the Party's territory."

Article II [2]

81. The CHAIRMAN then drew attention to article II, which, in the text proposed by the Special Rapporteur (A/CN.4/64), read as follows:

"For the purpose of article I, a foundling shall be presumed to have been born in the territory of the Party in which it is found, until the contrary is proved."

He recalled that, in considering an identical provision in the draft Convention on the Elimination of Future Statelessness, the Commission had deleted the words "until the contrary is proved", and inserted the words "whose place of birth is unknown" after the word "foundling".

82. Mr. LAUTERPACHT felt that for the sake of uniformity the same changes should be made in the text of article II of the draft Convention on the Reduction of Future Statelessness.

83. Mr. YEPES and Mr. SCELLE felt that the words "until the contrary is proved" should be retained, since it was a violation of judicial practice to withhold a nationality from anyone who could prove that he had a right to it.

84. Mr. ZOUREK said that he need merely repeat what he had said during the discussion on the draft Convention on the Elimination of Future Statelessness, namely, that the deletion of the words "until the contrary is proved" was illogical and wholly inappropriate, particularly in view of the fact that the Commission had decided to place no age limit on foundlings. It was by no means exceptional for the origin of a foundling to be subsequently cleared up; it had happened tens of thousands of times during and immediately after the second World War.

85. Mr. LIANG (Secretary to the Commission) pointed out that the effect of the words "whose place of birth is unknown" was, at least, very similar to the effect of the words "until the contrary is proved". If the foundling's place of birth became known, article II would cease to apply.

Further discussion of article II was adjourned until the next meeting.

The meeting rose at 1 p.m.

221st MEETING

Wednesday, 22 July 1953, at 9.30 a.m.

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* The number within brackets corresponds to the article number in the Commission's report.

Chairman: Mr. J. P. A. FRANÇOIS.

Rapporteur: Mr. H. LAUTERPACHT.